

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
 BIRMINGHAM CRIMINAL DIVISION**

**GENEVA MARION COOLEY,**

*Petitioner,*

v.

**STATE OF ALABAMA,**

*Respondent.*

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**CASE NOS. CC-2002-4405.61  
 CC-2002-4406.61**

**STATE’S RESPONSE TO RULE 32 PETITION**

COMES NOW the State of Alabama, by and through the undersigned, the District Attorney for the Tenth Judicial Circuit, Jefferson County, Alabama, and submits the following in response to the above styled Petition for Relief for Conviction or Sentence:

1. Respondent respectfully requests this Honorable Court take judicial notice of its own records in the above cited cases.
2. Respondent was convicted of Trafficking Heroin and Trafficking Hydromorphone on August 30, 2006, and was sentenced to life without parole and life imprisonment.
3. The State of Alabama does not oppose Petitioner Geneva Cooley’s request for relief filed on December 20, 2018.

**JURISDICTION OF THE COURT**

Although Petitioner Cooley previously submitted an unsuccessful Rule 32 petition, this Honorable Court may exercise jurisdiction to consider the Petitioner’s successive petition because the Petitioner has demonstrated that good cause exists as to why she could not have ascertained

the grounds for her current petition at the time of her previous filing, and that failure to entertain her petition will result in a miscarriage of justice.<sup>1</sup>

As to the first requirement that Petitioner Cooley could not have made her current arguments in her previous petition, it must first be noted that her original petition was filed on November 14, 2008.<sup>2</sup> That petition claimed ineffective assistance of counsel, challenged the application of the habitual felony offender enhancement, and requested resentencing pursuant to Wilson v. State.<sup>3</sup> Here, Petitioner Cooley makes a different Eighth Amendment claim, specifically that a 2018 overhaul of the Alabama criminal trafficking law's sentencing structure entitles her to relief.<sup>4</sup> Because the sentence of life without parole was not removed from the drug trafficking sentencing structure until 2018, the State agrees that Petitioner Cooley could not have included this claim in her 2008 filing.

As to the second requirement that failure to entertain her petition will result in a miscarriage of justice, Petitioner Cooley argues that the miscarriage of justice would consist of "her certain death at Tutwiler prison while others who commit similar or more serious crimes can no longer be given the same sentence."<sup>5</sup> Given that she has been sentenced to life without parole, but for this honorable Court's intervention, she will surely die while incarcerated. It is also true that others sentenced to the same crimes can no longer be sentenced to life without parole under the state's trafficking laws.<sup>6</sup> The State thus concurs with Petitioner Cooley's assertion that she is entitled to file a successor Rule 32 petition.

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<sup>1</sup> Ala. R. Crim. P. Rule 32.2(b).

<sup>2</sup> State vs. Cooley, 01-CC-2002-4405.60, -4406.60 (Cir. Ct. Jefferson Co.)

<sup>3</sup> Id.

<sup>4</sup> Petr.'s Mot. 6-12

<sup>5</sup> Id. at 6

<sup>6</sup> Ala. Code § 13A-12-231.

**RESENTENCING PURSUANT TO THE EIGHTH AMENDMENT**

The State acknowledges that were Petitioner Cooley sentenced today for the crimes she committed in 2002, she would be sentenced to life with the possibility of parole, rather than life without parole. In 2018, the Alabama Legislature enacted legislation that completely removed the sentence of life without parole from the drug trafficking act. Whereas life without parole was previously the harshest sentence for trafficking of highest amount of all types of illegal drugs, as of April 6, 2018, Alabama no longer permits any conviction for a type or amount of drug to trigger a mandatory sentence of life without parole.<sup>7</sup> Even with the imposition of the habitual felony offender sentencing enhancement for the two prior felonies found by the trial court judge, today Petitioner’s sentence could not exceed life with the possibility of parole.<sup>8</sup>

It is against this backdrop that the State considers the proportionality doctrine of the Eighth Amendment of the United States Constitution.<sup>9</sup> The Alabama Supreme Court has recognized that the judicial branch’s understanding of proportionality evolves over time.<sup>10</sup> As such, the fact that Petitioner Cooley’s sentence was proportional to her crimes at the time of her sentencing does not guarantee that the same sentence will remain proportional over time.<sup>11</sup>

Proportionality can be determined by considering the seriousness of the crime and the punishment, other sentences imposed within Alabama for similar and more serious crimes, and sentences imposed for the same crime outside of Alabama.<sup>12</sup> By completely eliminating life without parole as a possible sentence in the state trafficking law, the Alabama legislature has

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<sup>7</sup> Ala. Code § 13A-12-231

<sup>8</sup> Ala. Code § 13A-5-9(b)(3).

<sup>9</sup> See Miller v. Alabama, 132 S. Ct. 2455, 2463 (2012) (discussing how the Eighth Amendment’s right to be free from cruel and unusual punishment is analyzed by the Court in terms of proportionality).

<sup>10</sup> Ex parte Henderson, 144 So. 3d 1262, 1266 (Ala. 2013).

<sup>11</sup> See Estelle v. Gamble, 429 U.S. 97, 102 (1976) (confirming that the Court’s inquiry extends to an examination of “evolving standards of decency”) (quoting Trop v. Dulles, 356 U.S. 86, 101 (1958)).

<sup>12</sup> Solem v. Helm, 463 U.S. 277, 290-92 (1983).

explicitly re-evaluated and rejected the appropriateness of life without parole in the drug trafficking context. In Alabama, while adult defendants convicted of homicide may be sentenced to either death or life without parole,<sup>13</sup> life without parole is not available as a sentence for defendants convicted of other violent crimes including rape in the first degree,<sup>14</sup> kidnapping in the first degree,<sup>15</sup> and assault with a deadly weapon.<sup>16</sup> Likewise, it is not available for drug trafficking offenses. In fact, the Alabama criminal code mandates that the maximum penalty for any Class A felony not otherwise specified is “life or not more than 99 years” Rather than life without parole.<sup>17</sup>

The third prong of the Solem test—requiring courts to consider sentences imposed for the same crime outside of Alabama—also supports Petitioner’s request for relief. If sentenced today, Petitioner Cooley could not be sentenced to life without parole in Alabama’s neighboring states for the trafficking charges of which she was convicted. In Mississippi, the amount of drugs Petitioner Cooley was found with would have resulted in a sentence between 10 and 40 years.<sup>18</sup> Even aggravated trafficking, which she could not have been found guilty of, can only result in a sentence of 25 years to life.<sup>19</sup> In Georgia, the applicable trafficking statute specifies a mandatory minimum sentence of 25 years.<sup>20</sup> In Tennessee, based on the weight of the drugs,<sup>21</sup> Petitioner Cooley would earn a sentence of between 8 and 30 years.<sup>22</sup> Even the harshest trafficking statute<sup>23</sup>

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<sup>13</sup> Ala. Code § 13A-6-2(c)

<sup>14</sup> Ala. Code § 13A-6-61(b)

<sup>15</sup> Ala. Code § 13A-6-4(c)

<sup>16</sup> Ala. Code § 13a-6-20(b)

<sup>17</sup> Ala. Code § 13A-5-6(a)(1)

<sup>18</sup> Miss. Code. Ann. § 41-29-139(f)(1)

<sup>19</sup> Miss. Code. Ann. § 41-29-139(g)

<sup>20</sup> Ga. Code Ann. § 16-13-31.

<sup>21</sup> Tenn. Code Ann. § 39-17-417(i)

<sup>22</sup> Tenn. Code Ann. § 40-35-111(b)(2)

<sup>23</sup> Tenn. Code Ann. § 39-17-417(j)

would provide for a sentence of between 15 and 60 years.<sup>24</sup> Finally, in Florida, Petitioner Cooley would face a minimum sentence of 25 years for the drugs she was carrying.<sup>25</sup>

There is no doubt that, at both the time of her sentencing and the time of her original petition being denied, Petitioner Cooley's sentence was proportional and, thus, constitutional. Yet in light of the Alabama legislature's recent removal of life without parole from the drug trafficking statute, Alabama's hesitance to impose life without parole even upon conviction of violent crimes, and neighboring states' drug trafficking schemes failure to include life without parole as a possible sentence, Petitioner Cooley's sentence may no longer be proportional to the crimes she committed and could therefore be unconstitutional. The State therefore does not oppose her claim for relief.

WHEREFORE, PREMISES CONSIDERED, and in consideration of Ala. R. Crim. App. 32, the State of Alabama, respectfully moves this Honorable Court to exercise its sound discretion in the above cause, review these matters at an evidentiary hearing as requested by the Petitioner, and for such other, further and general relief as is proper.

Respectfully submitted this the 30th day of January, 2019.

*/s/ Danny Carr*

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**DANNY CARR**  
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**Of Counsel**

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<sup>24</sup> Tenn. Code Ann. § 40-35-111(b)(1)

<sup>25</sup> Fla. Stat. Ann. § 893.135(c)(1)(c)

**CERTIFICATE OF SERVICE**

I do hereby certify that I have served a copy of the above upon all counsel of record via electronic means through the Alabama Electronic Case Filing System and/or U.S. Mail on this the 30th day of January, 2019.

*/s/ Danny Carr*

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OF COUNSEL